

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

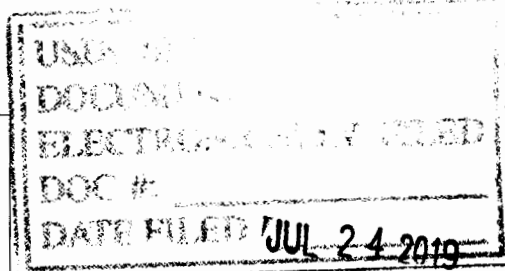
ALEXANDER WILLIAMS,

Plaintiff,

-against-

DEPARTMENT OF CORRECTIONS;
CORRECTIONAL OFFICER ALEXANDER;
DEPUTY RIVERA; CAPTAIN MATHIS,

Defendants.



19-CV-3347 (GBD)

ORDER OF SERVICE

GEORGE B. DANIELS, United States District Judge:

Plaintiff, currently detained in the Manhattan Detention Complex, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants are violating his constitutional rights. By order dated July 17, 2019, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP).¹

STANDARD OF REVIEW

The Court must dismiss a complaint, or portion thereof, that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b); *see Abbas v. Dixon*, 480 F.3d 636, 639 (2d Cir. 2007). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See Fed. R. Civ. P. 12(h)(3)*. While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they suggest,"

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

DISCUSSION

A. Department of Corrections

Plaintiff's claims against the Department of Corrections must be dismissed because an agency of the City of New York is not an entity that can be sued. N.Y. City Charter ch. 17, § 396 (“[A]ll actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the city of New York and not in that of any agency, except where otherwise provided by law.”); *Jenkins v. City of New York*, 478 F.3d 76, 93 n.19 (2d Cir. 2007); *see also Emerson v. City of New York*, 740 F. Supp. 2d 385, 396 (S.D.N.Y. 2010) (“[A] plaintiff is generally prohibited from suing a municipal agency.”).

In light of Plaintiff's *pro se* status and clear intention to assert claims against the City of New York, the Court construes the complaint as asserting claims against the City of New York and directs the Clerk of Court to amend the caption of this action to replace the Department of Corrections with the City of New York. *See* Fed. R. Civ. P. 21. This amendment is without prejudice to any defenses the City of New York may wish to assert.

B. Rule 21 of the Federal Rules of Civil Procedure

Plaintiff asserts that on March 25, 2019, Correctional Officer Ramirez denied him the right to contact 311 to report alleged constitutional violations. The Clerk of Court is therefore directed, under Rule 21 of the Federal Rules of Civil Procedure, to amend the caption of this action to add Correctional Officer Ramirez as a Defendant. This amendment is without prejudice to any defenses that Correctional Officer Ramirez may wish to assert.

C. Waiver of Service

The Clerk of Court is directed to electronically notify the New York City Department of Correction and the New York City Law Department of this order. The Court requests that Defendants the City of New York, Correctional Officer Alexander, Deputy Rivera, Captain Mathis, and Correctional Officer Ramirez waive service of summons.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff, together with an information package.

The Court dismisses Plaintiff's claims against the Department of Corrections. *See* 28 U.S.C. § 1915(e)(2)(B)(iii). The Clerk of Court is directed to add the City of New York as a Defendant under Fed. R. Civ. P. 21.

The Clerk of Court is directed to add Correctional Officer Ramirez as a Defendant under Fed. R. Civ. P. 21.

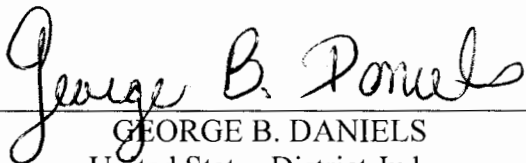
The Clerk of Court is directed to electronically notify the New York City Department of Correction and the New York City Law Department of this order. The Court requests that Defendants the City of New York, Correctional Officer Alexander, Deputy Rivera, Captain Mathis, and Correctional Officer Ramirez waive service of summons.

The Clerk of Court is directed to docket this as a "written opinion" within the meaning of Section 205(a)(5) of the E-Government Act of 2002.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: **JUL 24 2019**
New York, New York



GEORGE B. DANIELS
United States District Judge